

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0125P  
Adjusted Gross Income Tax  
For the Fiscal Year ended 01/31/2001**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalties assessed.

**STATEMENT OF FACTS**

Taxpayer protests the proposed late payment penalty. Taxpayer states that the late filing was not due to any willful neglect or with the intention to avoid the payment of the taxes due on or before the extended due date of the tax return. Taxpayer further states it was prevented from filing its return and full payment by the extended due date due to extenuating circumstances. It was required to restate its financial statements with the Securities Exchange Commission for the fiscal years 1999, 2000, and 2001. In order to accurately file its return, Taxpayer states it had to await the finalization of the financial restatement. During the restatement process, its resources were limited to the restatement and its tax filings were severely delayed. The return was filed October 9, 2002.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed for the late filing and payment of taxes. Taxpayer states that it had unforeseen circumstances that were unintentional.

Taxpayer did not pay ninety percent (90%) of its tax liability by the original due date which generated a late payment penalty. Taxpayer paid one hundred percent (100%) of its tax liability one year after the extended due date of the return.

Taxpayer failed to remit one hundred percent of the prior year's tax by the due date of the return.

IC 6-8.1-6-1 (a) states:

“If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90%) of the tax that is reasonably expected to be due on the due date.”

IC 6-8.1-6-1(d) states:

“Any tax that remains unpaid during an extension period accrues interest at a rate established under IC 6-8.1-10-1 from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.”

Taxpayer remitted one hundred percent (100%) of its tax one year after the extended due date.

Taxpayer has not provided reasonable cause to allow a penalty waiver. Procedures should have been in place to assure that taxes were timely paid.

### **FINDING**

Taxpayer’s protest is denied.